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8 Inc., Malpaso Productions, Ltd.,
9 Warner Bros. Distributing Inc.,
10 Warner Bros. Home Entertainment
Inc., Warner Communications Inc.,
TW UK Holdings Inc., Robert
Lorenz, Michele Weisler, and Randy
Brown

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

14 GOLD GLOVE PRODUCTIONS,
15 LLC, a California Limited Liability
Company and RYAN A. BROOKS, an
individual.

18

Plaintiffs,

V.

13 DON HANDFIELD, an individual,
14 TRESSA DIFIGLIA HANDFIELD, an
15 individual, RANDY BROWN, an
16 individual, MICHELE WEISLER, an
17 individual, CHARLES FERRARO, an
18 individual, JAY COHEN, an individual,
19 ROBERT LORENZ, an individual,
20 UNITED TALENT AGENCY, INC., a
21 California corporation, THE GERSH
22 AGENCY, a California corporation,
23 WARNER BROS. PICTURES INC., a
24 Delaware corporation, MALPASO
25 PRODUCTIONS, LTD., a California
26 corporation, WARNER BROS.
27 DISTRIBUTING INC., a Delaware
28 corporation, WARNER BROS. HOME
ENTERTAINMENT INC., a Delaware
corporation, WARNER BROS.
DOMESTIC TELEVISION
DISTRIBUTION, INC., a Delaware

Case No. CV13-07247-DSF (RZx)

DECLARATION OF RANDY BROWN

The Hon. Dale S. Fischer

1 corporation, TW UK HOLDINGS,
2 INC., a Delaware corporation, and
DOES 1-10, inclusive

3 Defendants.
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DECL. OF RANDY BROWN

DECLARATION OF RANDY BROWN

I, Randy Brown, declare and state:

1. I am over the age of eighteen and I have personal knowledge of the facts stated in this declaration. I submit this declaration to attest that I did not copy the script *Trouble with the Curve* (“TWTC”) from the plaintiffs in this case. I wrote TWTC in the 1990s—many years before plaintiffs claim their *Omaha* script was written. Until this lawsuit, I had not heard of plaintiffs, their *Omaha* script, or the short promotional video they say they made of *Omaha*.

2. I started working in the film and television industry in the late 1980s as an actor. In the 1980s, I tried my hand at writing and wrote my first script. It was a romantic comedy, involving reincarnation, titled *This Time Around*. I shared the script with an agent named Bill Block, who frequented a restaurant where I worked. He encouraged me to keep writing and to take screenwriting classes at UCLA. On his recommendation, I signed up for various screenwriting classes at UCLA, including extension classes taught by Neil Landau in 1995 and 1996.

3. As part of Neil's class, we had to pitch a script idea to Neil and the class, and I chose to pitch a baseball movie called *Trouble With The Curve*. I remember that each student had to fill out rows in a chart on a whiteboard laying out the basic story elements of his or her script, to see if the overall structure worked, and I remember outlining *TWTC* on the board. I played baseball growing up and was a fan of the sport.

4. Neil and other class members were supportive of my idea, and over the next several months, working almost every day in an office that I set up in my garage, I wrote a first draft of *TWTC*, from beginning to end. I submitted a copy to Neil as part of our class.

5. Even at this early stage, my script contained all of the characters and major storylines that I understand plaintiffs claim were stolen from their *Omaha* script. From the beginning, TWTC told the story of an aging, widowed,

1 cantankerous baseball scout for the Atlanta Braves (Gus) who is losing his eyesight
 2 to glaucoma, and who mends his relationship with his estranged daughter (Mickey),
 3 who in many respects is the opposite of him, while she accompanies him on a
 4 scouting trip in North Carolina. The *TWTC* script I first wrote also contained a
 5 romance subplot between Mickey and another scout and former baseball player,
 6 Johnny. I set the story in North Carolina because my father comes from there. I
 7 chose the Braves because that was my dad's favorite team. In part, I based the
 8 character Gus, who often swears, on a step-uncle of mine, with whom I lived briefly
 9 in Pasadena and who followed sports closely.

10 6. In and after Neil's class, I continued to revise *TWTC*, although the
 11 major characters and storylines stayed the same. Through 1996 and 1997, Neil
 12 continued to give me notes—as a teacher, consultant, and friend—and I worked on
 13 revisions to *TWTC* at writing workshops that Neil held at his home. Other students
 14 in Neil's workshops reviewed parts of my *TWTC* script, and I remember getting the
 15 comment that I needed to more fully develop the backstory for Gus and Mickey's
 16 strained relationship.

17 7. As I wrote and revised drafts of *TWTC* on my computer in the 1990s, I
 18 saved electronic files of the drafts on floppy discs. I did this routinely for other
 19 writing projects as well, not just for *TWTC*. When I saved these files, I often noted
 20 in the file name that the particular version of the script being saved was based on a
 21 certain person's notes that I had received.

22 8. After I was served with a copy of plaintiffs' complaint, I located in my
 23 desk at home seven floppy discs on which I had saved the *TWTC* electronic files. I
 24 had not accessed or used these discs for years, and indeed, I no longer own a
 25 computer that has a disc drive for such discs. On October 11, 2013, I gave the
 26 floppy discs I found to Scott Cooper, a computer forensics expert. Mr. Cooper
 27 analyzed the data on my floppy discs, and I understand he found the following ten
 28 electronic files related to *TWTC*: (1) a file named "Trouble 2 4.0"; (2) a file named

1 “Trouble 2nd draft”; (3) a file named “Trouble 7 - Neil notes”; (4) a file named
 2 “Dan & Pat draft”; (5) a file named “Dan/Pat/Randy”; (6) a file named “Trouble -
 3 Gina draft”; (7) a file named “Bubble Factory 2”; (8) a file named “Bubble Factory
 4 3”; (9) a file named “BubPunch.fdr”; and (10) a file named “BubPunch.fdr.”¹

5 9. True and correct copies of the scripts saved in these 10 files—which
 6 Mr. Cooper printed for me—are attached hereto as Exhibits A-J. I have reviewed
 7 these 10 scripts, and they appear in all respects to be the same *TWTC* scripts that I
 8 wrote and edited in the 1990s and early 2000s.

9 10. As discussed below, my drafts of *TWTC* noted above contain the story
 10 elements that plaintiffs say I stole from them and *Omaha* sometime after 2004.

11 a. A Baseball Story. Baseball is one of the sports that I am most familiar
 12 with because I played it as a child and teen and have always been a
 13 baseball fan, so I settled on baseball as the backdrop for my story.
 14 Plaintiffs’ allegations that I never spoke to a baseball scout during my
 15 writing process is untrue. *See* FAC ¶ 148. In the 1990s, I spoke to former
 16 California Angel, Darrell Miller, who helped me with some of the more
 17 technical parts of the baseball story. In particular, I remember asking him
 18 about flaws that a player could have with his swing that would be both
 19 difficult to cure and difficult for a scout to spot, as I wanted Gus and
 20 Mickey to show their scouting prowess by discovering such a flaw in the
 21 character Bo Gentry’s swing. Based on my conversations with Mr.
 22 Miller, I used a concept of a “backside generated swing” in various early
 23

24 ¹ Based on my usual practices of saving documents, I believe the 10 files
 25 above were early revisions of the scripts (drafts numbered (1) and (2) above); a
 26 revision based on notes I got from Neil Landau (number (3)); drafts based on notes
 27 from or for my writer friends Dan Ljoka and Pat_(numbers (4) and (5)); a draft
 28 based on notes from or for my then-manager Gina Matthews (number (6)); drafts
 based on notes from or for the production company The Bubble Factory (numbers
 (7) and (8)); and drafts based on notes or for the Bubble Factory and Dustin
 Hoffman’s production company, Punch Production (numbers (9) and (10)).

1 drafts of my script. *See, e.g.*, Exs. C at 309; D at 411; E at 513; F at 621;
2 G at 734; H at 850; I at 966; J at 1081. Pasted below from Exhibit G are
3 several examples of how I used that concept in a Bubble Factory copy of
4 the script that Mr. Cooper dated January 30, 1998.

5 || Ex. G at 734:

6 MICKEY (cont'd)
7 Oh shit...

8 The pitcher looks back in for the sign. Catcher signals for another CURVE. Mickey watches Bo intently.

10 Pitcher throws. WANK. It's hit deep to left. Going - going -
11 gone. Mickey's not watching the ball, instead looking at Bo,
considering his swing.

12 It just barely clears the wall for a homer. The crowd erupts.
13 Bo raises his arms as he rounds the bases. The Grizzly
Players storm the field in CELEBRATION.

14 Mickey searches Gus out, goes to him.

15 GUS
Is there a hitch?

16 MICKEY
17 Worse. Everything is back-side
generated.

Id. at 736:

JOHNNY

I don't know, Gus. From everything the main office has heard, they think we're drafting the next Joe DiMaggio.

GUS

He'd be damn lucky if he could be the next Michael Jordan. It's not everyday you get a number one. Be careful.

MICKEY

Tell 'em what's going on. That you don't think they should take such a big chance.

JOHNNY

Are you sure? Not even as a project?

GIS

You want to use the number one pick on a project? Look, if you're just tryin' to cover your ass, fine, sign him. I don't work that way.

JOHNNY

I'm just trying to be sure.

GIS

Listen loud and clear to what I'm tellin' you. A lot of young scouts who don't know any better would draft him because they think he'll learn. But anything back-side generated is next to impossible to fix. It's a rhythm that's created at birth, like being right handed or left handed. Understand? I'm not signing him.

Id. at 739:

I'm not signing him. ^{GUS}

PETE
I've heard nothing but great things
about this kid.

GUS

As we prepared the final production version of the script in 2012, I spoke with additional scouts. One of them shared with me that a player's hands drifting was an even better flaw to use in the story, and I included that flaw in the final draft of the script. You can see that flaw discussed in the final *TWTC* movie, a true and correct DVD copy of which is attached as Exhibit K, at the time codes 1:12:50-1:13:15, 1:16:25-1:16:45, and 1:22:28-1:22:36. I took none of these details from *Omaha*—which I still have neither read nor seen.

b. The father-daughter story. Originally, I envisioned *TWTC* as a romantic comedy where two scouts from rival baseball teams, one a Yankee and one a Southerner, meet on a recruiting trip and fall in love. As I began developing the female character, however, I thought about how she could have come to know so much about baseball, and what in her upbringing would have motivated her to be a baseball scout. That led me to the idea of creating a father character for her who was a die-hard baseball fan, and a baseball scout himself. I became more and more interested in developing the father-daughter dynamic, and once I began writing, the father-daughter element emerged as the central storyline in *TWTC*. *See, e.g.*, Exs. C at 242-43, 257-58, 261-63, 275-76, 283-87, 290-91, 294-95, 300-03, 318-20, 328-30.

1 c. The Character of Gus. As noted above, Gus was based in part on my
2 aunt's former husband. He was a sports junkie, and a crass older man.
3 He drank Budweiser out of the can and used the word "goddamn" in just
4 about every sentence. This always struck me, and in the early versions of
5 the script, Gus uses the word "goddamn" frequently. *See, e.g.*, Exs. A at
6 27, 29, 66, 98; B at 135, 137, 175, 208; C at 245, 248, 286, 294, 316.
7 (Clint Eastwood chose not to curse as much when he played the Gus role.)
8 As I wrote the Gus character in the 1990s, I had Paul Newman in mind as
9 an archetype. I pictured him as cranky, stubborn, and masculine.

10 d. Gus' Illness. I included the storyline of Gus losing his eyesight to add
11 drama and conflict to *TWTC*, and to make him reliant on Mickey. I
12 remember thinking of possible causes for Gus' loss of sight, and I knew
13 that I had heard that glaucoma could cause blindness. I remember that I
14 also called my optometrist, explained to him that I was working on a
15 movie script, and asked him what other illness could cause blindness. He
16 suggested macular degeneration, and I added that to drafts of the script as
17 part of Gus' illness as well. *See, e.g.*, Exs. G at 672; H at 786; I at 903; J
18 at 1018. From experiences with my own father and men of his
19 generation, I also wrote that Gus would be very reluctant to see a doctor
20 or share his condition with his family and friends. Again, like all the story
21 elements I am discussing, I took none of them from *Omaha*—I created
22 them many years before and often based on archetype.

23 e. The Character of Mickey. I understand that plaintiffs also claim that I
24 copied Mickey's character of a professional woman in her mid-thirties
25 who is interested in healthy food and yoga. This, too, is untrue. I
26 purposely wrote her character to be as opposite from Gus as possible.
27 Mickey likes health food and practices yoga exactly because Gus does
28 not—his diet consists of pizza, fast food, and beer. I had Julia Roberts in

mind as an archetype as I developed Mickey's character, and I myself have long been focused on physical health issues.

f. The Romance between Mickey and Another Scout. TWTC always had a romance story between Mickey and Johnny, a scout and former player who was recruited by Gus. As mentioned above, I original conceived TWTC as a romantic comedy between two scouts, but in the writing, the Gus-Mickey story became much more important to me. I am a fan of romantic comedies, especially the sports movie *Jerry Maguire*, so I maintained the Mickey-Johnny storyline. I had John Cusak in mind as an archetype as I wrote Johnny's character.

g. Setting in the South. Although I grew up in San Jose, California, I have personal connections to the South, contrary to plaintiffs' allegations. My mother is from Mississippi and my father is from North Carolina. I spent a summer living with my mother in Asheville, North Carolina, when I was in my early twenties. *TWTC* was always set in the South. *See, e.g.*, Exs. A at 14, 73; B at 122, 182; C at 232, 292; D at 338, 395; E at 439, 497; F at 541, 601; G at 651, 715; H at 765, 831; I at 883, 947; J at 998, 1062.

h. The Braves. I chose the Braves as Gus' team because it is the closest major league baseball team to North Carolina (where I wanted the scouting trip to take place), and because my father was a Braves fan. Gus is a scout for the Braves in all of the drafts of *TWTC* that I wrote, including those attached here. *See, e.g.*, Exs. A at 16; B at 124; C at 234; D at 340; E at 441; F at 547; G at 659; H at 773; I at 891; J at 1006.²

11. I worked for some 18 years to get *TWTC* made into a movie. I shared copies of the script with many people over the years, including in the mid-1990s,

² Plaintiffs and their lawyers have made a number of other personal attacks on me, accusing me of crimes, calling me an impostor, and commenting on my personal life. These hurtful and damaging claims—none of which they ever bothered to discuss with me before filing this lawsuit—are without basis.

1 when I gave a copy of *TWTC* to Gerard Bocaccio. Gerard and I had worked
 2 together at a restaurant, and he had been hired by The Bubble Factory, a movie
 3 production company. Gerard read *TWTC*, told me he liked it, and gave me some
 4 notes and minor edits. I remember that Gerard added in the scene where Gus visits
 5 his dead wife's gravesite, and eats a deli sandwich. *See, e.g.*, Ex. H at 722.

6 12. After I incorporated Gerard's notes, I gave the revised script back to
 7 him, and he gave it to the executives at The Bubble Factory. I remember Gerard
 8 calling me to tell me The Bubble Factory liked *TWTC* and wanted to option it. I
 9 was ecstatic. This was the first time that I would be paid for my writing. I entered
 10 into an option agreement with The Bubble Factory in 1997. Over the next few
 11 months, I worked with The Bubble Factory to revise *TWTC* in accordance with
 12 their notes.

13 13. In early 1998, Gerard and The Bubble Factory began submitting
 14 *TWTC* to third party studios, managers, and agents on behalf of The Bubble Factory
 15 in an effort to find an actor to play Gus. I remember Gerard telling me that he had
 16 sent *TWTC* to Dustin Hoffman's company, Punch Productions, for consideration,
 17 and that Mr. Hoffman had expressed interest in making the movie.

18 14. I attended a meeting at The Bubble Factory's offices in 1998 with
 19 Mr. Hoffman. Gerard, Sid Sheinberg, and his sons Bill and John, were also at the
 20 meeting, as well as Joanne Moore and Jay Cohen, both of whom worked at Punch
 21 Productions at the time. Mr. Hoffman read several lines from *TWTC*, and at the end
 22 of the meeting, he told us that he was interested in making *TWTC* and playing the
 23 character Gus. I was elated. However, as happens, the project fell through when
 24 Mr. Hoffman backed out of the movie months later.

25 15. After The Bubble Factory's option to purchase my script expired, Neil
 26 Landau helped me get freelance work as a writer. I wrote scripts for a show he
 27 worked on and worked on other scripts I had written, but I spent most of my time
 28 caring for my two children.

1 16. In the early 2000s, however, my *TWTC* script was still being passed
 2 around to production companies, managers, and agents for consideration. Larry
 3 Shapiro, an agent at Nine Yards Entertainment, expressed interest in getting *TWTC*
 4 produced. I met Mr. Shapiro when I was involved in the Bubble Factory deal, as he
 5 worked in an office in the same building. I gave Mr. Shapiro a copy of *TWTC* in
 6 the early 2000s, he read it, and as a baseball fan, he said it piqued his interest. Mr.
 7 Shapiro represented an actress named Lauren Holly at that time, who Mr. Shapiro
 8 told me was also a baseball fan, and he said he passed the script along to her. I was
 9 told that Ms. Holly read the script in the early 2000s, that she liked it, and that she
 10 passed it on to Dennis Smith, a television director that Ms. Holly worked with on
 11 the series *Picket Fences*. Mr. Shapiro set up a breakfast meeting for me and
 12 Mr. Smith. At that meeting, Mr. Shapiro and Mr. Smith gave me comments on
 13 *TWTC*. Although the feedback was positive, no film ever came out of this meeting.

14 17. Jay Cohen was another person who made efforts to get *TWTC*
 15 produced in the early 2000s. Mr. Cohen had been involved in the *TWTC*-Bubble
 16 Factory project when he worked at Punch. He continued to pursue the project after
 17 he moved to Cosmic Entertainment (“Cosmic”), a production company owned by
 18 Goldie Hawn and Kurt Russell. I remember that while he was at Cosmic, Cosmic
 19 gave a copy of *TWTC* to Michael Wright, an executive at TNT, for consideration as
 20 part of a film series that TNT was producing in partnership with Johnson &
 21 Johnson. Again, this proposed television project did not come to fruition.

22 18. After the TNT submission fell through, and after other similar
 23 discussions with people about *TWTC*, I took a break from writing. My wife and I
 24 went through a divorce, and I had two young children to care for, and thus, had
 25 little time to devote to writing.

26 19. The next project I remember working on was a pilot for a television
 27 series called *East West* that I co-wrote with Neil Landau, my former professor at
 28 UCLA Extension. It was a one-hour drama about an estranged father and daughter

1 who work to mend their relationship. Instead of baseball, however, the backdrop
 2 for *East West* is medicine—the father character is a western-trained internist and
 3 the daughter character is a holistic healer who lives in Berkeley. Although the pilot
 4 did not sell to any television production studios, working on this script motivated
 5 me to get back into writing.

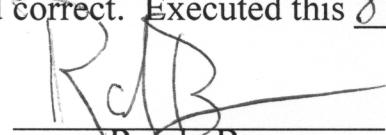
6 20. In 2011, Neil had a book-signing party at his home for a book he had
 7 just published, and he invited me to attend. He also invited Michele Weisler, a film
 8 and television producer, and one of the defendants in this lawsuit. Michele and I
 9 met for the first time at Neil’s party, and began dating. Soon after in 2011, Michele
 10 read *East West*, and asked to read more of my work, so I gave her a copy of *TWTC*.
 11 She read *TWTC* in the summer of 2011, and gave me notes on the script. Though
 12 she had some overall comments for improvement, like deepening the backstory for
 13 Gus and Mickey’s estrangement, she thought the script had great potential for a
 14 movie, and encouraged me to try again to get *TWTC* produced. With her support, I
 15 decided to start submitting *TWTC* again. Michele and I discussed who would be
 16 the target recipient for *TWTC*, and she sent it to Malpaso Productions (“Malpaso”)
 17 for Clint Eastwood’s consideration, and I sent it to my former UCLA professor,
 18 John Shaner, who liked the script and wanted to pass it along to Jack Nicholson.

19 21. Robert Lorenz, a director who works at Malpaso and a defendant in
 20 this lawsuit, responded to us. He called, said he liked the script, and offered a few
 21 suggested minor changes. In response, I wrote the storyline that appears in the
 22 movie but not the earlier drafts of the script explaining that Gus sends Mickey away
 23 to boarding school after he catches a man attempting to molest her when she is a
 24 child accompanying him on a recruiting trip. (You can see this scene at time codes
 25 1:29:54-1:32:00 of Exhibit K, a DVD copy of *TWTC*.) I also remember that Mr.
 26 Lorenz requested that I take out the scene where a stray ball thrown by the
 27 undiscovered baseball phenom, Gun Henderson, hits Mickey’s windshield while
 28 she is driving on a country road alone after she, Gus, and Johnny have a fight. *See*,

1 e.g., Exs. A at 103; B at 213; C at 322. This bit of magical realism had always been
2 one of my favorite scenes, but I removed it at Mr. Lorenz's suggestion, and
3 replaced it with a scene where Mickey hears a young prospect pitching baseballs to
4 his brother outside of Mickey's motel room. (You can see this scene at time codes
5 1:33:40-1:36:28 of Exhibit K, a DVD copy of *TWTC*.) Mr. Lorenz also put me in
6 touch with scouts from the Braves, who answered technical baseball questions for
7 me and helped me add the "hand drifting" concept noted above.

8 22. Mr. Lorenz and Mr. Eastwood ultimately made the *TWTC* movie. I
9 spent a few days on the set, one time bringing my kids to see the production. I
10 copied no part of my *TWTC* script—either the early drafts or later revisions—from
11 *Omaha*. *TWTC* is a story and script I worked on, off and on, for 18 years, and I am
12 very proud of it.

13 I declare under penalty of perjury under the laws of the State of California
14 and the United States that the foregoing is true and correct. Executed this 8th day of
15 November, at Los Angeles, California.



Randy Brown

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